

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
JOANNE L. BEST	:	DETERMINATION
	:	DTA NO. 819296
for Revision of a Determination or for Refund of	:	
Mortgage Recording Tax under Article 11 of the Tax	:	
Law with Reference to an Instrument Recorded on	:	
September 3, 2002.	:	

Petitioner, Joanne L. Best, 86 Main Street, Brockport, New York 14420, filed a petition for revision of a determination or for refund of mortgage recording tax under Article 11 of the Tax Law with reference to an instrument recorded on September 3, 2002.

On May 6, 2003 and May 16, 2003, respectively, petitioner, appearing *pro se*, and the Division of Taxation, by Mark F. Volk, Esq. (Michelle M. Helm, Esq., of counsel), waived a hearing and agreed to submit the matter for determination based on documents and briefs to be submitted by December 30, 2003, which date commenced the six-month period for the issuance of this determination. After review of the evidence and arguments presented, Winifred M. Maloney, Administrative Law Judge, renders the following determination.

ISSUE

Whether petitioner is entitled to a refund of the special additional mortgage recording tax paid to the Orleans County Clerk's Office pursuant to Tax Law § 253(1-a)(a).

FINDINGS OF FACT

1. On August 28, 2002, Woodrow Baker and George Bott transferred to George and Alice Irvine property located at 115 South Clinton Street and 111 Beaver Street, Albion, New York. As part of that transfer, George and Alice Irvine, as mortgagors, executed their Note and Mortgage dated August 28, 2002 to Woodrow Baker and George Bott (the “mortgagees”). The Note and Mortgage was secured by a mortgage on the property located at 115 South Clinton Street and 111 Beaver Street, Albion, New York.

2. A Note and Mortgage, securing a principal debt in the amount of \$123,246.00, was recorded on September 3, 2002, in the office of the Clerk of Orleans County and a mortgage recording tax in the sum of \$924.00, including \$308.00 in special additional mortgage recording tax, was paid. The Orleans County Clerk’s Office Recording Page lists the property subject to the note and mortgage as 115 South Clinton Street and 111 Beaver Street, Town and Village of Albion and also lists two Tax Map numbers. When the Note and Mortgage was recorded, the affidavit of the individual (the mortgagee) exempt from the special additional mortgage recording tax was not filed.

3. On October 28, 2002, the Division of Taxation (the “Division”) received a Mortgage Recording Tax Claim for Refund (form MT-15.1) wherein petitioner, Joanne L. Best, the attorney who recorded the note and mortgage at issue, requested a refund of \$308.00. In that refund claim, petitioner asserted that because the mortgagees of the property are natural persons and the property described in the mortgage consists of a structure containing six residential units or less, each with separate cooking facilities, the mortgage qualifies for the exemption from the special additional mortgage recording tax allowed by Tax Law § 253(1-a)(a). Among the documents included with the refund claim is the “Mortgagee’s (Lender’s) Affidavit (Exemption

from Special Additional Mortgage Tax) (Natural Person) (Tax Law § 253[1-a][a])” of Woodrow Baker, one of the mortgagees.

4. On December 12, 2002, the Division denied petitioner’s refund claim. The letter explained that the residential - natural person exemption allowed under Tax Law § 253(1-a)(a) did not apply to the mortgage at issue because that “mortgage secures property which consists of more than one structure.”

5. Petitioner filed a petition challenging the denial of her refund claim. In the petition, petitioner states that the property has two separate mailing addresses, 115 South Clinton Street and 111 Beaver Street, Albion, New York and that each address is improved by one structure containing six residential units or less, each with separate cooking facilities. She asserts that both 115 South Clinton Street and 111 Beaver Street are contained on one deed and survey because none of the owners “have ever felt it necessary to separate the abstract and re-do a survey.” Petitioner claims that the mortgage securing these two addresses qualifies for the exemption from the special additional mortgage recording tax allowed by Tax Law § 253(1-a)(a) and her petition should be granted.

CONCLUSIONS OF LAW

A. Tax Law § 253(1) states in part that:

[a] tax of fifty cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is, or under any contingency may be secured at the date of the execution thereof or at any time thereafter by a mortgage on real property situated within the state . . . is hereby imposed on each such mortgage, and shall be collected and paid as provided in this article.

B. Tax Law § 253(1-a)(a) provides, in pertinent part:

In addition to the tax imposed by subdivision one of this section, there shall be imposed on each mortgage of real property situated within the state, except mortgages wherein the mortgagee is a natural person or persons and the mortgage premises consist of real property improved by *a structure* containing

six residential dwelling units or less, each with separate cooking facilities, a special additional tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is, or under any contingency may be secured at the date of execution thereof or at anytime thereafter by such mortgage. . . . (Emphasis added.)

C. Petitioner argues that the subject mortgage is exempt from the special additional mortgage recording tax because the mortgagees are natural persons and the mortgaged premises consist of two separate and distinct properties, each of which is improved by a structure containing six residential units or less.

D. It is well established that when the issue to be decided is whether the taxpayer is entitled to an exclusion or exemption from tax, the taxpayer is required to prove that her interpretation of the statute is the only reasonable interpretation, or that the Division's interpretation is unreasonable (*Matter of Grace v. State Tax Commn.*, 37 NY2d 193, 371 NYS2d 715, *lv denied* 37 NY2d 708, 375 NYS2d 1027; *Matter of Blue Spruce Farms v. New York State Tax Commn.*, 99 AD2d 867, 472 NYS2d 744, *affd* 64 NY2d 682, 485 NYS2d 526; *Matter of Marriott Family Rests. v. Tax Appeals Tribunal*, 174 AD2d 805, 570 NYS2d 741, *lv denied* 78 NY2d 863, 578 NYS2d 877).

Since petitioner seeks the benefit of an exemption from the special additional mortgage recording tax, which, like all tax exemptions is strictly and narrowly construed, the burden is on petitioner to demonstrate that she comes within the reach of the exemption (*Matter of Grace v. State Tax Commn.*, *supra*; *Matter of Federal Deposit Insurance Corp. v. Commissioner of Taxation and Finance*, 83 NY2d 44, 607 NYS2d 620).

E. When construing a statute, the intention of the Legislature is first to be sought from a literal reading of the act itself or of all statutes relating to the same general subject matter. The legislative intent is to be ascertained from the words and language used in the statute, and if the

language thereof is unambiguous and the words plain and clear, there is no occasion to resort to other means of interpretation (McKinney's Cons Law of NY, Book 1, Statutes § 92(b); *see, DiMarco v. Hudson Valley Blood Services*, 147 AD2d 156, 542 NYS2d 521, 522-523). Tax Law § 253(1-a)(a), as set forth in Conclusion of Law "B," was amended by chapter 751 of the Laws of 1986 to include the language relating to natural person mortgagees of premises improved by a structure containing six residential dwelling units or less.

The language of this statute is unambiguous and the words plain and clear. In order to qualify for the exemption from the special additional mortgage recording tax, a mortgage must have a mortgagee who is a natural person and the mortgaged premises must consist of real property improved by "a structure" containing six residential units or less. The phrase "a structure" is singular and means "one structure." In the instant matter, the mortgagees are natural persons. However, the mortgage secures real property improved by two structures, each with six units or less. The mortgage fails to meet both conditions necessary for the exemption from the special additional mortgage recording tax. Accordingly, petitioner is not entitled to the exemption provided for in Tax Law § 253(1-a)(a).

F. The petition of Joanne L. Best is denied and the Division of Taxation's denial of the refund claim is sustained.

DATED: Troy, New York
April 1, 2004

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE